BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

KELLY DON ROBERTS	)	
Claimant	)	
	)	
VS.	)	
	)	
LAWRENCE DECORATING SERVICE	)	
Respondent	)	Docket No. 1,021,638
	)	
AND	)	
	)	
NATIONWIDE MUTUAL INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier (respondent) requested review of the May 29, 2007 Award by Administrative Law Judge (ALJ) Brad E. Avery. The Board heard oral argument on August 22, 2007.

APPEARANCES

Roger D. Fincher, of Topeka, Kansas, appeared for the claimant. Matthew S. Crowley, of Topeka, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ found that the "claimant's work duties were at least an aggravating factor in contributing to what the medical evidence would indicate is a seriously injured back through a series of injuries."[1] He therefore found that the claimant suffered personal injuries by accident arising out of and in the course of employment with the respondent,

[1] ALJ Award (May 29, 2007) at 4.

culminating in an accident date of March 24, 2005[2] and that timely notice and written claim had been established. Based upon claimant's own testimony, his average weekly wage was found to be $838.50 and as of August 26, 2005, $890.42 (including fringe benefits).[3] And finally, the ALJ awarded a 16.67 percent whole body functional impairment and a 79.84 percent work disability. The work disability figure represents an average of the task loss opinions and a 100 percent wage loss.

The respondent requests review of each and every finding made by the ALJ. This includes:

1. Whether the condition for which benefits are being ordered constitute personal injury arising out of and in the scope of claimant's employment with the respondent;
2. Whether proper notice was given by the claimant of his alleged accident;
3. Whether timely written claim was made;
4. The claimant's average weekly wage;
5. The nature and extent of disability; and
6. Future authorized medical care.

Distilled to its essence, respondent contends that claimant's low back problems are the natural and probable result of a 2000 workplace injury[4] and not caused by any work-related event in 2004 or over a series of dates ending on March 24, 2005. Thus, the Award should be wholly reversed. Failing that argument, respondent argues that insufficient notice and a less than timely written claim are fatal to claimant's claim. And even if those hurdles can be overcome, respondent maintains the ALJ erroneously calculated claimant's average weekly wage based upon the written documents provided by respondent and that the task loss found by the ALJ does not reflect a true average of the task loss opinions contained within the record. Lastly, respondent steadfastly maintains that the ALJ inappropriately designated claimant's personal physician as the treating physician and instead should have ordered respondent to provide a list of 3 physicians from which claimant could choose to provide authorized treatment. In short, respondent suggests the ALJ's Award should be reversed on each and every issue.

Claimant contends the evidence supports his claim for a 91 percent work disability, based upon a 100 percent wage loss and an 82 percent task loss and the Award should be modified to reflect this contention but affirmed on all other issues.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

[2] *Id*. at 4.

[3] The ALJ concluded fringe benefits were terminated as of August 26, 2005.

[4] This 2000 injury was the subject of a workers compensation claim which was subsequently settled in 2002 between claimant and this respondent and docketed as No. 1,003,576.

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

In 2000, the claimant sustained a compensable injury when he fell 12-15 feet from a roof while employed by this respondent. He shattered his left heel, left ankle and suffered 2 compression fractures in the lower thoracic and upper lumbar areas of his back. According to claimant, he received no treatment for his back following this injury. He later entered into a settlement and was released without restrictions and with the right to future medical left available.

Claimant returned to respondent's employ in September 2002, performing his normal job duties which included climbing ladders, painting, running lifts and carrying materials. He testified that his back complaints would wax and wane but that he was able to perform all the duties required of him as a commercial and residential painter.

Claimant alleges he suffered another injury while in respondent's employ, an injury which is the subject of this claim. Unfortunately, the record is not consistent as to the date of this second injury. Initially this claim was pled as a series of accidents essentially occurring each day claimant worked for respondent. At the initial preliminary hearing claimant described a very precise accidental injury. He testified that in December 2004 he was lifting a 70-90 pound paint bucket on a job when he felt a snap followed by a burning sensation in his back.[5] Claimant could not remember what job he was working at the time. But some of the medical records referenced the same accident occurring in October 2004. The preliminary hearing was adjourned allowing respondent an opportunity to gather additional medical records. When the preliminary hearing resumed, claimant testified the accident occurred late in October 2004. Then at another hearing claimant testified very specifically to an accident date of October 17, 2004 while working at a job at the Amaar Garage Door Plant, a job that respondent's records suggest was not active on that date.

Although the actual date of the alleged acute injury seems to be in flux, claimant has nevertheless consistently attributed his injury to the act of picking up a 5 gallon bucket of paint. And he has consistently maintained that since that event, his back has continued to hurt, the pain continues to worsen and he suffers from radiating pain into his legs.

In the days following his accident, both legs began to hurt in addition to his lower back. Claimant believes the men working with him at the time knew about his back pain and he also told his boss, David Aikins, on the day of the accident or the next day. He testified that he asked Mr. Aikins if the company had a doctor for him to see to address his back pain. None was offered, but Mr. Aikins apparently made a suggestion that claimant seek treatment with a chiropractor, a suggestion claimant later apparently followed.

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[5] P.H. Trans. (Apr. 28, 2005) at 12.

Mr. Aikins testified that while claimant certainly complained about his back hurting claimant never indicated it was connected to his work-related activities. Nonetheless, Mr. Aikins understood claimant was making this request in connection with a workers compensation claim.[6] Mr. Aikins further testified that after claimant went to a chiropractor, he informed Mr. Aiken that the claimant's back was "broken" and that the claimant wanted a second opinion. Mr. Aikins referred claimant to the workers compensation carrier. And at a later deposition, Mr. Aikins testified that not only was claimant *not* on a painting job at the Amaar plant on October 17, 2004, he distinctly remembers a conversation with claimant about his back pain while they were on *another* job, weeks after October 17, 2004. At that time, the homeowner overheard the two talking and she suggested he go see her husband, an anesthesiologist, who provided injections for back pain.

Claimant continued to work at his normal job albeit with problems with his back. This continued until March 24, 2005 when the pain increased and claimant sought treatment from an emergency room. This was the last date claimant worked. Claimant contacted another boss, Gary Schmidtberger, and told him he needed treatment for his back pain. Gary told him to "go do what it takes to get it taken care of and get it fixed so I can come back to work".[7]

When treatment was not provided by respondent, claimant sought preliminary hearing relief. Following the hearing, at which both claimant and Mr. Aikins testified, the ALJ granted claimant's request for medical treatment and temporary total disability benefits commencing March 24, 2005. Claimant eventually had surgery February 1, 2006, in which he had three disks removed and his lower back was fused.[8] After surgery the claimant went to work hardening and was released on May 16, 2006.[9]

According to claimant, the surgery relieved his leg pain but his back continues to hurt, the pain waxing and waning from day to day. Although claimant certainly testified that his back is no different from what he was experiencing before his most recent accident, he later testified that he cannot do his regular work duties as he could before. And it is clear from the totality of the evidence that claimant's condition is worse than it was following his 2000 accident. Presently the bulk of his complaints relate to his lumbar spine, whereas the back complaints following the 2000 accidental injury involved the thoracic area and his ankle. And there is no dispute that respondent cannot accommodate claimant's restrictions.

After his release claimant was advised that there was no work available for him within the restrictions imposed by the treating physician. Since that time and up to the Regular Hearing, claimant has been looking for work. In the span of 2-1/2 months claimant

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[6] P.H Trans. (May 5, 2005) at 65.

[7] R.H. Trans. (Nov. 20, 2006) at 13.

[8] *Id.* at 13-14.

[9] Baker Depo., Ex. 2 at 3 (Nov. 7, 2006 Report).

sought employment with 70 businesses. He has had some interviews but when the subject of job duties is discussed, claimant discloses his restrictions. He has yet to be offered a job. Claimant does not own a computer nor does he have any experience with computers.

Claimant testified that when he was working for respondent, he was earning $19.50 per hour and worked as much as 8 hours overtime per month earning 1-1/2 times his hourly rate. In addition, respondent paid claimant a $225 per month stipend to be used for health insurance. The documents produced by respondent do not bear out this hourly rate. The records show that claimant's highest hourly rate was $17.25 per hour. And those same records do not show any overtime with any regularity, at least in 2005.

Three physicians testified in this claim and spoke to the issue of the claimant's permanent partial functional impairment as well as his task loss as required by K.S.A. 44-510e(a). Dr. Baker was retained by respondent both in connection with this claim and his earlier claim. He testified that following claimant's 2000 accident, he diagnosed claimant with degenerative disease of the lumbar spine. Dr. Baker did not diagnose radiculopathy nor did he diagnose any herniated disk. Surgery was not recommended and Dr. Baker ultimately assigned a 4 percent permanent partial impairment to the back as a result of that condition, but released claimant to return to work without restrictions. He further testified that he would have expected claimant to have ongoing problems with his back given his spine condition.

In November 2006, Dr. Baker examined claimant once again, diagnosing the same condition in the lumbar spine. This examination revealed a herniated disk which Dr. Baker attributed to the natural progression of claimant's disc disease, although Dr. Baker's own report describes claimant's work activities as carrying buckets of paint as an aggravating event. Using the range of motion method set forth in the AMA *Guides*, Dr. Baker assigned a 12 percent permanent partial impairment to the lumbar spine. This 12 percent includes the earlier 4 percent assigned in the 2000 accidental injury. Interestingly, Dr. Baker testified that he does not know if repetitive lifting causes back injury or worsens degenerative disc disease. Dr. Baker concedes that the patient may complain more but he is uncertain if they are worse as a result of such activities.

Claimant was also evaluated on August 1, 2006 by Dr. Lynn Curtis at the request of his lawyer for purposes of his earlier claim as well as the one here. At his earlier examination he identified a low back injury along with persistent lumbar pain radiation to L1-2 with activities as a result of the 2000 accident.[10] Dr. Curtis examined claimant again in June 2006 and diagnosed an "aggravation of degenerative disc disease, L4-5 disc herniation, left L5 radiculopathy, aggravation of L3-4, L5-S1" all of which he attributed to the aggravating events of October 2004 and March 2005.[11] He assigned a 29 percent permanent partial impairment to the whole body as a result of claimant's condition. And from this 29 percent, he deducted 12 percent which he originally assessed for claimant's

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[10] Curtis Depo. at 7.

[11] *Id.* at 6; Ex. 2 at 1 (Aug. 1, 2006 report).

lumbar spine as a result of the earlier 2000 accident, leaving a net impairment rating of 17 percent.

When the parties could not agree upon claimant's functional impairment, the ALJ appointed Dr. Paul Stein to conduct an independent medical examination pursuant to K.S.A. 44-534e(a). The examination took place on April 11, 2007. Dr. Stein noted the confusion within the records as to the date of claimant's accident. Claimant added to that confusion by attributing his complaints to an injury on March 24, 2005 when he was lifting paint buckets. In spite of this confusion, he noted that claimant's back and left leg pain were present since the end of 2004 before any date of injury in March of 2005.[12] Given all the confusion as to the date of the accident, Dr. Stein concluded "there is no documentation to sustain a new work related injury to the lower back in March of 2005. The work activity in October of 2004 and/or March of 2005 may have contributed to the disk herniation and surgery, but I cannot state this within a reasonable degree of medical probability and certainty."[13]

Nevertheless, Dr. Stein assigned a 25 percent permanent partial impairment to the body as a whole based upon DRE lumbosacral category V on the basis of lost motion segment integrity and radiculopathy. He went on to say that this impairment "is completely separate from the impairment to the thoracic spine from the injury in 2000."[14]

Dr. Stein was not asked to provide any task loss opinion but both Drs. Baker and Curtis were. Dr. Baker adopted another physician's restrictions and using Bug Langston's task list he found a 33 percent task loss and with Dick Santner's list, a 64 percent task loss. Dr. Curtis opined claimant suffered a task loss of 82 percent using Mr. Santner's task list.

The ALJ found in favor of claimant on all of the compensability issues and concluded claimant suffered a 16.67 percent functional impairment to the lumbar spine coupled with a 79.84 percent permanent partial general (work) disability based upon a 100 percent wage loss and a 59.67 percent task loss. He also appointed claimant's personal physician, Dr. Borchers, as the treating physician.

The threshold issue to determine in this matter is to decide the appropriate date of accident. Only then can the balance of the disputed issues be considered. Claimant initially pled this as a series of accidents and his own testimony suggests that the nature of his work was repetitive and could well have caused a series of microtraumas to his low back. But at the preliminary hearing(s), claimant offered a variety of acute injury dates, from December 2004, to end of October 2004 and then finally October 17, 2004. The lawyers and the ALJ have grappled with this challenge from the inception of this claim. The ALJ ultimately concluded that claimant sustained a series of injuries culminating in a date

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[12] Stein IME Report at 6 (April 11, 2007).

[13] *Id.* at 6-7.

[14] *Id.*

of accident on March 24, 2005, his last date of work for respondent based upon the principles set forth in *Berry*.[15] And after considering all of the evidence proffered by the parties, the Board agrees.

The Board finds that it is more probably true than not that the claimant sustained an accidental injury arising out of and in the course of his employment with respondent over a series of dates rather than just a single acute injury. While it is certainly true that claimant testified to a specific date of an injury, a date that it turns out is incorrect based upon respondent's records, he also testified about the nature of his job and the need to repetitively lift buckets of paint, assemble and climb up scaffolding and operate man lifts.

Having determined the accident date is March 24, 2005, the Board can further affirm the ALJ's factual conclusions with respect to notice and timely written claim. K.S.A. 44-520 provides:

> **Notice of injury.** Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.

Based upon this statute, claimant was required to give respondent notice of his accident within 10 days of the accident date, here legally determined to be March 24, 2005, or within 75 days, assuming there is just cause for the delay. Both claimant and Gary Schmidtberger, respondent's part-owner, testified that on March 24, 2005 claimant called Mr. Schmidtberger and told him that he needed treatment for his back. And before that, claimant had a conversation with the other owner, David Aikins, at some point in time, most probably in November 2004, advising him that he required treatment and/or a second opinion for his back pain. And Mr. Aikins has candidly testified that he knew claimant was speaking about a work-related injury.[16] And on February 21, 2005, an Application for Hearing was filed, alleging a series of accidents injuring claimant's back. Based upon all

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[15] *Berry v. Boeing Military Airplanes*, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

[16] P.H. Trans. (May 5, 2005) at 65.

these facts, the Board affirms the ALJ's factual conclusion that claimant gave sufficient notice as required by K.S.A. 44-520.

Likewise, the Board affirms the ALJ's conclusion that claimant met the time requirements set forth in the written claim statute. That statute, K.S.A. 44-520a, provides in part:

> (a) No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation; or within one (1) year after the death of the injured employee if death results from the injury within five (5) years after the date of such accident.

Here the written claim requirement was satisfied on February 21, 2005 when claimant filed his application for hearing. The fact that this date falls before the legally determined date of accident is of no consequence. The ALJ is affirmed on this issue.

Turning now to claimant's average weekly wage as of March 24, 2005, there is a factual dispute between the parties. Claimant maintains he was earning $19.50 per hour plus 2 hours overtime each week. In contrast, respondent's records indicate claimant was earning $17.25 per hour and had no overtime in the 26 weeks before his legally determined accident. The ALJ concluded claimant's base wage was $838.50 without fringe benefits and $890.42 with fringe benefits effective August 26, 2005, the last time respondent paid claimant's insurance stipend.

After considering this evidence, the Board finds the ALJ's conclusions must be modified. The respondent's business records indicate that at no time did claimant make more than $17.25 an hour and for the last 26 weeks before his injury, he never worked overtime. And there is no reason to believe that respondent's records are inaccurate, particularly when claimant's recollection has been less than accurate. Accordingly, the Board modifies the Award to reflect an average weekly wage of $690.

As for the fringe benefits, it appears from the respondent's records that on August 26, 2005, the final fringe benefit stipend check was paid for the month. Thus, as of September 26, 2005 claimant's average weekly wage would increase to the higher rate of $741.92 per week rather than on August 26, 2005 as set forth in the Award. The Award is modified to reflect this change.

Turning now to the nature and extent of claimant's impairment, the Board has considered the 16.67 percent functional impairment assessed by the ALJ and concludes that finding should be affirmed. Respondent contends the average of all three ratings fails to take into account the preexisting impairment attributable to claimant's 2000 accident. The Board disagrees. While the ALJ appears to have averaged the 8 percent offered by

Dr. Baker (which does include impairment from the earlier accident), the other two ratings reflected impairments related exclusively to the accident at issue herein, excluding any preexisting impairments. Thus, the ALJ did take into account claimant's preexisting impairment, perhaps just not as much as respondent would have liked. The ALJ's 16.67 percent functional impairment is affirmed.

When, as here, an injury does not fit within the schedules of K.S.A. 44-510d, permanent partial general disability is determined by the formula set forth in K.S.A. 44-510e(a), which provides, in part:

> Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. **The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury.** In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. **An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.** (Emphasis added.)

But that statute must be read in light of *Foulk*[17] and *Copeland*.[18] In *Foulk*, the Kansas Court of Appeals held that a worker could not avoid the presumption against work disability as contained in K.S.A. 1988 Supp. 44-510e(a) (the predecessor to the above-quoted statute) by refusing an accommodated job that paid a comparable wage. In *Copeland*, the Kansas Court of Appeals held, for purposes of the wage loss prong of K.S.A. 44-510e(a) (Furse 1993), that a worker's post-injury wage should be based upon the ability to earn wages rather than actual earnings when the worker failed to make a

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[17] *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995). But see *Graham v. Dokter Trucking Group*, ___ Kan. ___, 161 P.3d 695 (2007), in which the Kansas Supreme Court held, in construing K.S.A. 44-510e, the language regarding the wage loss prong of the permanent disability formula was plain and unambiguous and, therefore, should be applied according to its express language and that the Court will neither speculate on legislative intent nor add something not there.

[18] *Copeland v. Johnson Group, Inc.*, 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

good faith effort to find appropriate employment after recovering from the work-related accident.

> If a finding is made that a good faith effort has not been made, the factfinder *[sic]* will have to determine an appropriate post-injury wage based on all the evidence before it, including expert testimony concerning the capacity to earn wages.[19]

There is no dispute that respondent was unwilling or unable to accommodate claimant's restrictions following his release from treatment in May 2006. Thus, it was incumbent upon claimant to employ a good faith effort find appropriate post injury employment. In its brief respondent does not argue that claimant failed to put forth a good faith effort to find employment. But at oral argument respondent's counsel contended claimant was applying for jobs outside his restrictions and that such effort should constitute a lack of good faith. It is unclear what this statement is based upon. Claimant testified that in the 2-1/2 months after his release and up to his regular hearing he sought employment with 70 businesses. Some of these businesses were construction companies but the others were retail grocery, liquor and convenience stores. When the details of the positions were discussed he would disclose his restrictions. There is no indication in the file that he did this prematurely or in an effort to sabotage his job search. Rather, it comes across that he disclosed the restrictions at the appropriate time in the job interview. Under these circumstances, the Board affirms the ALJ's conclusion that claimant made a good faith effort to find appropriate post injury employment. Likewise, the claimant's actual wage loss of 100 percent is affirmed as well and will be used to compute his work disability.

As noted by the ALJ, all 3 physicians who examined claimant and testified (or their reports are in evidence) assigned restrictions, but only Dr. Curtis and Dr. Baker assigned a task loss. The ALJ averaged the task loss opinions and assigned a 59.67 percent task loss. The Board finds no justifiable reason to disturb the ALJ's conclusion and therefore affirms it along with the ultimate work disability of 79.84 percent.

Finally, respondent takes issue with the ALJ's decision to appoint claimant's personal physician as the treating physician, thus depriving respondent of the opportunity to designate the medical provider. The Board agrees with respondent's contention and modifies the ALJ's Award to direct respondent to designate 3 orthopaedic physicians, not associated with one another, from which claimant may select one to direct his care.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated May 29, 2007, is modified to reflect the directive to the respondent to provide a list of 3 orthopaedic physicians, but otherwise affirmed.

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[19] *Id.* at 320.

IT IS SO ORDERED.

Dated this _____ day of September, 2007.

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BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Matthew S. Crowley, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge

BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

KELLY DON ROBERTS	)	
Claimant	)	
	)	
VS.	)	
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LAWRENCE DECORATING SERVICE	)	
Respondent	)	Docket No. 1,021,638
	)	
AND	)	
	)	
NATIONWIDE MUTUAL INSURANCE CO.	)	
Insurance Carrier	)	

ORDER NUNC PRO TUNC

It has come to the attention of the Board that a clerical error was made in the Board Order in the above-captioned matter issued on September 17, 2007. The final Award paragraph failed to acknowledge the modification of claimant's average weekly wage.[20] The Award should read as follows:

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated May 29, 2007, is modified to reflect the directive to the respondent to provide a list of 3 orthopaedic physicians, and to reflect a modified average weekly wage. All other findings and conclusions contained within the ALJ's Award are hereby affirmed to the extent they are not modified herein.

[20] Claimant was granted a work disability based on a 100 percent wage loss. The modification of his average weekly wage is relevant for purposes of future review and modification, if any.

IT IS SO ORDERED.

Dated this _____ day of September, 2007.

_____
BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Matthew S. Crowley, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge